

SUMMARY OF DOD RECOMMENDATIONS TO AMEND UCMJ AND MODIFY MCM IN RESPONSE TO SECTION 571, NDAA FY'05 REQUEST

- The Joint Service Committee on Military Justice (JSC) conducted this review and provided proposed changes to the Uniform Code of Military Justice (UCMJ) and Manual for Courts-Martial (MCM) as part of an ongoing review of UCMJ sexual offenses which the JSC initiated in March 2004.
- Overall, the JSC review confirmed that the current structure and provisions of the UCMJ and MCM enabled the prosecution of cases involving sexual misconduct. However, the JSC review also concluded that improvements could be achieved in the manner in which sexual assault issues are addressed.
- JSC recommended DoD follow UCMJ process for making changes: (1) measured changes to UCMJ; (2) more in-depth changes to the MCM and guidance by the President's Sect 836 rule-making authority (Executive order).
- Changes to UCMJ (chapter 47 of title 10, United States Code):
 - o Sect 839 (Art 39) - allows appearance of accused & counsel or military judge by remote (VTC) means during pretrial sessions.
 - o Sect 843 (Art 43) – amend statute of limitations (SOL) for murder, rape, & child abuse
 - Clarifies that rape has unlimited SOL
 - Certain child abuse offenses the SOL will now be for life of child or within 5 years of date of offense whichever is longer. This allows for longer period of prosecution in the event the child dies from the abuse.
 - o Sect 893a (Art 93 a) – adds a stalking offense to UCMJ. Previously charged under Art 134, prejudicial to good order & discipline. Modeled after the Federal “Model Antistalking Code for the States”
 - o Sect 920 (Art 120)
 - Eliminates the requirement that the government prove that the victim did not consent to sexual intercourse, unless the issue of consent is first raised by the defense--shifts the burden to the defense.
 - Deletes the statutory discussion of “Mistake of Age Defense” for carnal knowledge offenses.
 - o Sect 925 (Art 125)
 - Limits offense to Forcible Sodomy and sodomy of a child. Requires the prosecution to prove that the act of unnatural copulation was done “by force”.

- Removes from Sect 925 sodomy between consenting adults and unnatural copulation with an “animal” – offenses to be addressed as proposed “sex-related offenses” in paragraph 62, Part IV, MCM.
- Changes to MCM (by Presidential Executive order Rule-Making under Article 36, UCMJ):
 - Art 120 – Places burden of raising consent on the defense, adds degrees of rape and maximum punishment dependent upon level of force, and accused state of intoxication is not relevant. Threatening includes use of military position, rank, or authority.
 - Art 125 – amended to be forcible sodomy and sodomy of a child versus all acts of sodomy, consent must be raised by defense (except children under 16 cannot legally consent), degrees of sodomy based on level of force and include use of military position, rank or authority.
 - Art 134 – “Indecent Assault” & “Indecent Acts with a Child” that is a sexual act or sexual contact not amounting to intercourse or sodomy and was done by force. Makes defense raise consent. Degrees of indecent assault recognize the variations in level of force used.
 - Art 134 – Sex-related Offenses. Collects sex-related offenses into one article including adultery, consensual sodomy that is prejudice to good order and discipline, prostitution, patronizing a prostitute, pandering, public intercourse/sodomy, sexual act. A crime if prejudicial to good order and discipline or service discrediting. Additional sex-related offense such as indecent acts, indecent exposure, indecent language, wrongful cohabitation, fraternization, & indecent liberties with a child will also be realigned under this paragraph.
 - RCM 1103A-Creates a new rule establishing procedures for review and guidance for limiting access to sealed exhibits and court-martial proceedings.
 - MRE 412—The military rape-shield law (military rule of evidence 412) change is to make clear that the protections afforded apply to all cases involving sexual offenses where the focus of the offense is on the offender’s conduct.
 - MRE 513 – Psychotherapist-patient privilege change to allow for confidentiality & privilege communications involving sexual assault and domestic violence during UCMJ and non-UCMJ proceedings. Current rule applies only to UCMJ proceedings.
- The changes to the UCMJ and MCM make needed changes while preserving executive authority in such military justice matters.